

April 27, 1999

James A. Mazza  
Hazardous Materials Planning Coordinator  
Oregon Emergency Management  
595 Cottage Street NE  
Salem, OR 97310

Dear Mr. Mazza:

This letter is in response to your correspondence dated April 16, 1999 concerning a possible conflict of interest by a member of the Local Emergency Planning Committee.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF**  
**OPINION 99S-012**

**STATED FACTS:** The Local Emergency Planning Committee (LEPC) is a volunteer committee which directs planning and training activities related to hazardous materials. All members of the LEPC are from local government or private industry. The Interagency Hazards Communication Commission (IHCC) is a body of state agency personnel (established by ORS 453.527) and citizen representatives (appointed by the Governor) who oversee the LEPC's activities.

Oregon Emergency Management (OEM) is a member of the IHCC and provides contractual and fiscal management services for federal grants which the LEPC receives to accomplish its mission. Mr. Steve Hausotter is a citizen at large member of the LEPC and chair of the Training Subcommittee. He participates in the decision making process as to how money is allocated. Mr. Hausotter, until recently, was employed by Tualatin Valley Fire and Rescue (TVF&R), a local government agency. TVF&R has been a major recipient of funds from LEPC for conducting planning and training activities, usually performed by Mr. Hausotter.

On March 18, 1999, Mr. Hausotter was among a number of employees laid off by TVF&R. In order to complete contractual obligations to the LEPC and OEM, TVF&R is subcontracting work to Mr. Hausotter. OEM is concerned with the possible conflict of interest which may arise if Mr. Hausotter continues to participate in the LEPC decision making process. Mr. Hausotter is a recognized national leader in development and James delivery of hazardous materials training, and is a valuable asset to the LEPC. He is a dedicated individual and, to a large extent, the driving force for the success which the LEPC has experienced.

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His current status as a private citizen begs the question of the degree to which he may participate in the LEPC's decision making process. TVF&R has not made it clear if they will continue to participate in the LEPC's training and planning activities. However, if they do, it is probable that their intention would be to subcontract with Mr. Hausotter, should he be available. There also exists the possibility that Mr. Hausotter may choose to go into business for himself.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to this opinion:

ORS 244.020(1): Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (7) of this section.

ORS 244.020(2): Business means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity.

ORS 244.020(3): Business with which the person is associated means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

ORS 244.020(7): Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated...

ORS 244.020(15): Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

ORS 244.040: Code of ethics; prohibited actions; honoraria. The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of

interest are announced or disclosed pursuant to ORS 244.120.

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(1)(a) No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated.

ORS 244.120: Methods of handling conflicts; generally; application to elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

(2): An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

QUESTION: Would there be a violation of Government Standards and Practices laws if a member of the Local Emergency Planning Committee (LEPC) took official action that impacted compensation which might be received by the member for rendering professional services?

OPINION: If the committee member were to take any official action which could or would have a financial impact on the member's salary or benefits the member would have to proceed according to the requirements of ORS 244.120(2). The law prescribes different actions by the committee member depending upon whether the conflict of interest is actual or potential.

Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. A potential conflict of interest exists when an official takes action that could possibly have a financial impact on that official, a relative of that official or a business with which the

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official or the relative of that official is associated. Such possible financial impact is not certain. An actual conflict of interest occurs when the action is reasonably certain to result in a financial benefit or detriment. It will occur when an action taken by the official would directly and specifically affect the financial interest of the official or the official's relative or a business with which the official or the official's relative is associated.

If a potential conflict of interest arises, the official may participate in the action, once a public disclosure has been made. In the case of an actual conflict of interest, the official must publicly disclose the actual conflict and refrain from taking any official action on the issue. If the official's vote is necessary for the public body to take action on the matter, the official may vote but may not discuss, debate or otherwise participate in the matter.

If Mr. Hausotter knew for sure that TVF&R would contract with him to conduct planning and training activities if TVF&R received funding from LEPC, Mr. Hausotter would have an actual conflict of interest. He would therefore, be obligated to comply with ORS 244.120(2)(b). If he did not know for a fact that he would receive such a contract from TVF&R, or any other organization that may be seeking similar funding but, knew that there was such a possibility, Mr. Hausotter would have a potential conflict of interest and would be required to comply with ORS 244.120(2)(a).

**THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.**

Please don't hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn  
Executive Director